

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. RDB-14-0186
	:	Civil No. RDB-19-2312
RICHARD C. BYRD,	:	
Defendant.	:	

**MOTION OF RICHARD C. BYRD FOR TEMPORARY HOME DETENTION IN LIGHT
OF EMERGENCY CIRCUMSTANCES (COVID-19)**

Richard C. Byrd, through undersigned counsel, respectfully requests that the Court temporarily resentence him to a period of home confinement based on the current outbreak of SARS-CoV-2 (COVID-19) at Correctional Treatment Facility (CTF) in Washington, DC.¹ Mr. Byrd suffers from medical conditions that put him at particular risk of severe illness if he is infected with the virus. We are informed that at least one inmate in Mr. Byrd's unit of 38 inmates held in close quarters has tested positive for COVID-19, and a total of 55 inmates have confirmed cases at CTF. Mr. Byrd's family is willing to post a substantial bond and provide housing nearby in Bowie, Maryland, with his sister, for the duration of his temporary home detention. Mr. Byrd will abide by any conditions that guarantee he remains in the jurisdiction. This motion is based on simple humanity: Mr. Byrd is convicted of drug offenses and is not a danger to the community. If he is infected by the virus, however, Mr. Byrd may suffer fatal consequences from COVID-19.h

It is worth noting that Mr. Byrd was free on \$150,000 cash bond (later returned) in Arizona from February 2011 to April 2014 and did not flee even after indictments were handed up for members of his family in April of 2013. Mr. Byrd's history in this case indicates that he is not a

¹ SARS-CoV-2 is the technical name of the virus. COVID-19 is the name of the illness one has as a result of the virus. For purposes of this Motion, we will refer to either COVID-19 or the virus, as applicable.

flight risk. He also expects to be monitored while on home confinement and will agree to any conditions the Court imposes in that regard.

As has been noted in the press, CTF currently has an outbreak of COVID-19 that is so severe that members of the prison workers union have called for a vote of no confidence in prison leadership. See Mitch Ryals, *Inmates, Corrections Officers and Lawyers Say the D.C. Department of Corrections' Response Isn't Cutting It*, Washington City Paper (March 25, 2020), available at: <https://www.washingtoncitypaper.com/news/article/21124509/inmates-corrections-officers-and-lawyers-say-the-dc-department-of-corrections-coronavirus-response-isnt-cutting-it>; C.J. Ciaramella, *Coronavirus Fears Mount in D.C. Jail After Quarantines*, Reason (March 23, 2020), available at: <https://reason.com/2020/03/23/coronavirus-fears-mount-in-d-c-jail-after-quarantines>. The D.C. Superior Court has issued a Standing Order regarding Motions for Release From Custody Due To the COVID-19 Pandemic. See Criminal Standing Order, March 22, 2020-Amended, available at: <https://www.dccourts.gov/sites/default/files/Order-Attachment-PDFs/Standing-order-amended.pdf>. The ACLU, joined by the officers' union, filed a lawsuit regarding conditions in the DC jail, including CTF. Edward Banks, et al. v. Quincy Booth and Lennard Johnson, No. 1:20-CV-829, (D.D.C. Complaint filed 3/30/2020). The outbreak in DC's jail system is one of the largest at correction facilities throughout the United States. Spencer S. Hsu, "U.S. Judge Hears Lawsuit to Release D.C. Jail Inmates Amid Coronavirus Outbreak," Washington Post (April 7, 2020), available at: https://www.washingtonpost.com/local/legal-issues/us-judge-hears-lawsuit-to-release-dc-jail-inmates-amid-coronavirus-outbreak/2020/04/07/b5ae7ae0-7836-11ea-8cec-530b4044a458_story.html?utm_campaign=wp_main&utm_medium=social&utm_source=twitter

The current global pandemic related to the virus and COVID-19 disease is incredibly serious. According to the World Health Organization (WHO), as of April 6, 2020, over 1,214,466 confirmed cases of COVID-19 exist in the world, there have been 67,767 confirmed deaths, and the disease has spread to 211 countries. *See* WHO, *Coronavirus disease (COVID-19) Pandemic*, (last accessed April 6, 2020), available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>. The Court is no doubt aware of the drastic social distancing and stay at home measures put in place by the governors of Maryland and Virginia, as well as by the Mayor of the District of Columbia. Given this outbreak, counsel assumes there are more than enough sources from which this Court can take judicial notice of the outbreak as well as the prescribed measures, such as social distancing, frequent handwashing, and additional cleaning and disinfecting, to combat it. *E.g.*, Centers for Disease Control (CDC), *How to Protect Yourself*, (last accessed March 26, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

As noted on Attachment A, Mr. Byrd has a history of severe asthma. Both the WHO and the CDC list asthma as a condition that puts its sufferers at higher risk of getting very sick from COVID-19. CDC, *People with Asthma and COVID-19*, (last accessed March 26, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/asthma.html>; WHO, *Who is at risk of developing severe illness?*, (last accessed March 26, 2020), available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>. COVID-19 can affect the respiratory tract, cause asthma attacks, and lead to pneumonia and acute respiratory disease. *Id.* Thus, Mr. Byrd is at risk of becoming seriously ill because of his history of severe asthma if he develops COVID-19.

As revealed on attachment A, Mr. Byrd also has Obstructive Sleep Apnea (OSA), which is thoroughly documented in his prison medical records. This condition, too, potentially creates a risk that Mr. Byrd will become very sick, possibly fatally so, if he develops COVID-19.

Finally, as a result of his OSA, Mr. Byrd uses a continuous positive airway pressure (CPAP) machine. Any use of a CPAP machine near the virus greatly increases the chance that the virus will be pushed into Mr. Byrd's lungs. The virus transmits in a multitude of ways – touch, aerosolized particles, and so on. *See* The New England Journal of Medicine, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, (March 17, 2020), available at: <https://www.nejm.org/doi/10.1056/NEJMc2004973>. CPAP machines are made of plastic. The virus can live on plastic for up to 72 hours. *See id.* CPAP users are advised to meticulously clean their machines as a result. *See* American Academy of Sleep Medicine (AASM), *Coronavirus FAQs: CPAP tips for sleep apnea patients*, (March 24, 2020), available at: <https://aasm.org/coronavirus-covid-19-faqs-cpap-sleep-apnea-patients/>. Conditions where Mr. Byrd is housed, however, do not lend themselves to this type of cleaning. Requests for additional protective equipment are being ignored, inmates are not receiving crucial information on the virus, and the air circulation inside the CTF is internal. *See* C.J. Ciaramella, *Coronavirus Fears Mount in D.C. Jail After Quarantines*, *supra*. Thus, it is highly likely that, if a COVID-19 positive inmate was to pass Mr. Byrd's cell, or a COVID-19 positive guard or other worker were to touch Mr. Byrd's CPAP machine during a routine cell check, he could easily become infected because of his use of the machine. One of the hallmarks of this virus has been asymptomatic transmission, and its incubation period – typically between five and fourteen days – easily makes possible inadvertent infection in the case of a prison setting like CTF. Appropriate social distancing

measures are not in place. The necessary standards of hygiene and protection are not in place. In this sense, Mr. Byrd is simply a severe, and potentially fatal, case of COVID-19 waiting to happen.

The media has correctly focused on those over age 60 as a risk group (Mr. Byrd is 46), but that does not include the many cases of younger people who develop severe and life-altering cases of the disease. Patients as young as 23 are being put on ventilators. *See* “Early study of COVID-19 patients shows high mortality rate”, University of Washington School of Medicine (April 1, 2020) (available at: <https://newsroom.uw.edu/news/early-study-covid-19-patients-shows-high-mortality-rate>). Because COVID-19 can permanently scar the lungs, it can result in permanent damage even to the relatively young with relatively mild cases. In fact, there are cases of people slightly younger than Mr. Byrd, with none of his underlying risks other than a history of asthma, who have been in critical condition and connected to ventilators in the recent past. *See* Siverman, Hollie, *He tweeted about his symptoms and coronavirus diagnosis problems. His husband says he was then put on a ventilator*, CNN (March 24, 2020), available at: <https://www.cnn.com/2020/03/23/us/lawyer-ventilator-coronavirus-trnd/index.html>. There has also been a fatal case of COVID-19 involving a substantially younger man who had a history of asthma and bronchitis. *See* Branson-Potts, Hailey, *Glendora man, 34, dies of coronavirus infection after visiting Disney World, sources say*, Los Angeles Times (March 19, 2020) available at: <https://www.latimes.com/6lendora6a/story/2020-03-19/6lendora-man-dies-coronavirus-disney-world>. Mr. Byrd should not be left to become another headline.

The Attorney General has directed the Bureau of Prisons to consider home confinement for inmates based on health risks due to COVID-19. *See* Memorandum of Attorney General William Barr, dated March 26, 2020, available at: <https://www.scribd.com/document/453777104/COVID-19-BOP-Memo-Re-Home-Confinement->

2020-03-26. These are simply unprecedented and dangerous times. The normal rules regarding home detention should not apply. The risks of this virus are simply too great.²

Finally, Mr. Byrd is not a danger to society. Home detention, with appropriate monitoring and, if this Court is so inclined, a substantial bond package established by family members, is sufficient to ensure Mr. Byrd returns to prison when the danger of this disease has passed. As stated at the outset, this motion is based on simple humanity. Mr. Byrd committed crimes for which this Court sentenced him to 26 years in prison. It did not impose, nor could it have, a sentence that requires Mr. Byrd suffer a potentially life-altering, perhaps fatal, and severe illness that is easily preventable. Therefore, we respectfully request that this Court order Mr. Byrd release to home confinement with such monitoring and other restrictions as this Court deems sufficient.

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ Lee Ann Anderson

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² Congress has provided a statutory remedy for inmates in federal correctional facilities. Under 18 U.S.C. Section 3582(c)(1)(A)(i), an inmate may seek relief from a Court after petitioning the Bureau of Prisons identifying the virus as an “extraordinary and compelling reasons to warrant a reduction.” However, because Mr. Byrd is not in a BOP facility, but in the CTF, such administrative steps are not available, which, along with the immediacy of the virus threat, is why this motion is being filed here and now.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Temporary Home Detention was served this 7th day of April, 2020, via CM/ECF on all parties.

/s/ Lee Ann Anderson

Lee Ann Anderson
Attorney for Richard C. Byrd

EXHIBIT A



MARICOPA COUNTY
CORRECTIONAL HEALTH SERVICES
234 North Central Ave.
Phoenix, AZ 85004

Flags - BYRD, RICHARD T370231

Name	Stamp	Start	Stop
831 No Work	10/10/2017	10/10/2017	
166 Blanket (BKT)	9/6/2017	9/6/2017	9/14/2017
97 Mental Health Chronic Care	7/21/2017	7/21/2017	
DGN10 G47.33 Obstructive sleep apnea (adult) (pediatric)	6/20/2017	6/20/2017	
DGN10 F43.1 Post-traumatic stress disorder (PTSD)	6/8/2017	6/8/2017	
166 Blanket (BKT)	6/6/2017	6/6/2017	9/6/2017
828 Proxy Medium	6/5/2017	6/5/2017	
271 No Tents (NOTENTS)	6/3/2017	6/3/2017	
24 Hypertension	6/3/2017	6/3/2017	6/3/2017
22 Asthma/Lung Problems	6/3/2017	6/3/2017	7/17/2017
DGN10 Z00.01 Encounter for general adult medical exam w abnormal findings	2/21/2018		